

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

JOHN REICHLIN, et al.,
Plaintiffs,

v.

DEL NORTE COUNTY DEPARTMENT
OF HEALTH AND HUMAN SERVICES, et
al.,
Defendants.

Case No. 14-cv-05213-NJV

**ORDER RE MOTION TO DISMISS BY
DEFENDANT DEL NORTE COUNTY
DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

Re: Dkt. No. 12

Plaintiffs John Reichlin, Theresa Reichlin, and Renee Reichlin filed their complaint on November 24, 2014, naming as Defendants Del Norte County Department of Health and Human Services, Open Door Community Health Centers, Warren Rehwaldt, M.D., and Candace Cudworth. Defendant Del Norte County Department of Health and Human Services has filed a motion to dismiss Plaintiffs' complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim on which relief can be granted. The court took the matter under submission on the papers, and for the reasons explained below, dismisses this action on other grounds.

Plaintiff's civil cover sheet indicates that the "Nature of the Suit" was "362. Personal Injury/Medical Malpractice." The same civil cover sheet, under "Cause of Action," states, "Several civil rights violated, care did not comply with professional standard." In their Complaint, Plaintiffs allege medical negligence claims against Defendants, arising out of the relationship between their mother, who died in May 2014, and Defendants.

In their pro se Complaint filed November 25, 2014, Plaintiffs assert the existence of federal question subject matter jurisdiction. As response to the question, "[w]hich laws or rights

are involved?" on the form complaint, Plaintiffs list simply, "I, V, IX, X." It appears that Plaintiffs rely on the First, Fifth, Ninth, and Tenth Amendments to the United States Constitution to support their claim and to establish subject matter jurisdiction over the case. However, neither the United States Constitution nor Federal law supports a medical malpractice claim. None of the amendments cited by Plaintiffs confer any right to adequate healthcare. Medical malpractice claims are governed by state statutes and state common law. *See Bui v. AT&T*, 310 F.3d 1143, 1147 (9th Cir. 2002) (attempt to invoke Federal jurisdiction under ERISA for a medical malpractice claim rejected; state law and regulation govern medical malpractice cases).

Based on the foregoing, the court finds that Plaintiffs have failed to establish any basis for federal subject matter jurisdiction over this action as to Defendant Del Norte County Department of Health and Human Services. While Plaintiffs state in their opposition to the motion to dismiss that they believe that they have a viable claim and that there are unspecified violations of the Social Security [A]ct and federal codes and regulations, this court is powerless to grant leave to amend when, as here, it lacks jurisdiction over the original complaint. *Morongo Band of Mission Indians v. California State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988). Federal subject matter jurisdiction must exist at the time an action is commenced. Without such jurisdiction, the court has no power but to dismiss the action. *Id.*

In their complaint, Plaintiffs allege that Defendant Candace Cudworth is a state employee. Complaint, Para. 5b. The court therefore must conclude that it lacks subject matter jurisdiction over Plaintiff's claims against Defendant Cudworth for the same reasons described above.

Accordingly, IT IS HEREBY ORDERED that:

1. This action is DISMISSED with prejudice as to Defendant Del Norte County Department of Health and Human Services and as to Defendant Candace Cudworth for lack of subject matter jurisdiction;
2. Defendant Del Norte County Department of Health and Human Services' motion to dismiss for failure to state a claim on which relief can be granted pursuant to Fed.R.Civ.P 12(b)(6) is DENIED as moot.

3. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: May 12, 2015

A handwritten signature in black ink, appearing to read 'NANDOR J. VADAS', written over a horizontal line.

NANDOR J. VADAS
United States Magistrate Judge